IN THE HIGH COURT OF HIMACHAL PRADESH,
SHIMLA.

CWP No. 1258 of 2001.

Date of Decision: 25th May, 2007.

Smt. Prem Lata **…..Petitioner.**

Versus

Union of India & Ors. **……Respondents.**

Coram

The Hon'ble Mr. Justice Dev Darshan Sud, Judge.

Whether approved for reporting?[1]

For the Petitioner: Mr. Onkar Jairath, Advocate.

For the Respondents: Mr. Ravinder Thakur, Central Government Counsel.

Dev Darshan Sud, Judge.

This writ petition has been filed by the widow of late L. Niak Hari Krishan, who according to the allegation in the petition, had died during the Indo Pak Bar on 7.12.1971 while he was serving in the Indian Army. The husband of the petitioner joined the Indian Army in the year 1962 as a Soldier (driver) and was posted in 32 Light Regiment. It is alleged that during 1971 Indo Pak war, the husband of the petitioner was serving in the Regiment and while discharging his duties, he sacrificed his life for the Country. Learned counsel for the petitioner submits that a telegram annexure P-A was sent by the respondents

[1] Whether Reporters of Local Papers may be allowed to see the judgment?

stating that the husband of the petitioner had been killed in action. The petitioner claims *ex gratia* payment of Rs. 50,000/- under the Rules. In order to substantiate the case, the petitioner has annexed letters annexure P-1 dated 30th November, 1999 issued by the Col. Commandant of the Regiment which says that a function is being organized in Katoch Stadium Jalandhar Cantonment for all the martyrs who died between 1.1.1971 to 15th August, 1999 for presenting momentoes, certificates to their next of kins. This letter is also addressed to the wife of the petitioner. Similarly, a letter annexure PF/T has been addressed by the Sub Divisional Officer (Civil) Una, to the petitioner stating that on the republic day i.e. 26.1.1972 all the martyrs of the Sub Division where the petitioner is resident will be honoured and their families will be granted relief etc. It also says that a prayer would be made for giving peace to the departed sole of the husband of the petitioner.

The respondents have denied that the petitioner was killed in action and have stated that the cause of death was "pain in stomach myocardial infarction". They relied on annexure R-3 and R-4. According to them this ailment was treated as attributable to army service and pension has been granted to the widow of the deceased.

I have heard learned counsel for the parties and gone through the records. *Ex. gratia* payment is for next of kin of the deceased is governed by the Rules in annexure R-1. The eligibility criterion is as under:-

(a) Should be a NOK of personnel killed in action.

(b) Should be a battle casualty with permanent disability.

The point for determination in this writ petition is whether the husband of the petitioner can be treated as a battle casualty. The earliest document in point of time is the telegram annexure P-A which has been sent to the petitioner stating that the husband of the petitioner has died in action. The other two communications referred to above also show that the husband of the petitioner is being treated as having been killed while discharging his duties in defence of his mother land.

In reply to the writ petition, it is denied that the petitioner has been killed in battle and the death is because of pain in the stomach myocardial infarction. This is a contradictory stand. Myocardial infarction is a heart condition which is quite different from pain in the stomach. The reply does not explain as to how annexures P-A and P-C have been issued to the husband of the petitioner treating him as a battle casualty. Reply to para -4 where the petitioner alleges that the telegram was issued, there is no specific denial. Surely, if he had not died in action, these communications would not have been issued to the petitioner. It is in these circumstances which convinces this court that the petitioner was, in fact killed in action and not died in the manner as alleged by the respondents. Further, as noticed by me, the cause of death of the petitioner is a contradiction in terms as is given by the respondents.

Under the circumstances I find no reason to disbelief the averments in the petition and to hold that the husband of the petitioner was killed in action. The writ petition is therefore, accepted and direction is

issued to the respondents that a sum of Rs. 50,000/- would be paid to the petitioner in terms of annexure R-A. Such payment shall be made within a period of 8 weeks from today. There shall be no order as to costs.

(Dev Darshan Sud)
Judge.

25th May, 2007.
(cm)